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No. 253

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

MEMPHIS STEAM LAUNDRY CLEANER, INC.
Appellant

Vs.

A. H. STONE, CHAIRMAN
STATE TAX COMMISSION
STATE OF MISSISSIPPI
Appellee

BRIEF ON BEHALF OF APPELLEE

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STATEMENT OF THE CASE

This case comes to this Court by direct appeal from the Supreme Court of Mississippi, the appeal being taken from the decision of the Supreme Court of Mississippi rendered on June 11, 1951, said decision of the court reversing the judgment of the Circuit Court of the First District of Hinds County, Mississippi, which judgment was rendered by the Circuit Court of the First District of Hinds County, being in favor of the plaintiff, the appellant herein.

The case was begun by the filing of a declaration in the Circuit Court of Hinds County, to which declaration an answer was filed and the case was submitted to the Judge without a jury, and the Judge rendered his opinion in which he held that the representatives of the plaintiff

who solicited wearing apparel from citizens of Mississippi to be laundered and cleaned, were not transient vendors. And, on this holding, a judgment was entered in favor of the plaintiff in the lower court for the amount sued for.

An appeal was perfected by A. H. Stone, as the Commissioner, representing the State of Mississippi, and on appeal to the Supreme Court of Mississippi, the judgment of the lower court was reversed and judgment was rendered in favor of the appellant, the Commissioner, which amounted to a dismissal of the original cause of action at the cost of the plaintiff.

THE FACTS

The appellant, the Memphis Steam Laundry Cleaner, Inc., is a foreign corporation having its principal place of business in the city of Memphis, State of Tennessee.

In order to procure the patronage of citizens of Mississippi, appellant sends its trucks in charge of its employees into the State of Mississippi for the purpose of soliciting articles of clothing to be laundered and cleaned. And since this activity of soliciting such articles falls clearly within the plain language of the Mississippi privilege tax statute, which imposes a tax of $50.00 on the use of each vehicle used in the solicitation and procuring of articles to be laundered and cleaned, and the statute further providing that the tax of $50.00 shall be paid on each vehicle used in the conduct of its business in each county, and the undisputed fact showing that one truck was sent into each of six counties in Mississippi, and two trucks were sent into two other counties of the state, making a total of ten trucks used on which a tax of $50.00 was imposed on the use of each such truck.

The statute in Mississippi imposing the tax having been set out at length in the brief of the appellant and in the opinion of the Supreme Court of Mississippi, appearing on page 11 of the printed record, the statutes are not here restated.

It will be noted from the declaration filed by the appellant in the Circuit Court of Hinds County, Mississippi, the plaintiff relied on three separate contentions in demanding judgment for a refund of the taxes paid were, first; that the plaintiff was not a transient vendor or dealer under the provisions of the act imposing the tax. Second; that the business conducted by the plaintiff was interstate commerce not subject to tax by the State of Mississippi, and Third; that because under Section 110, Chapter 137, Laws of Mississippi of 1944, being a local privilege tax, laundries licensed in Mississippi could send their trucks in municipalities other than that in which the laundry was conducted by the payment of a tax of $8.00 on each truck, whereas, under Chapter 138 of the Mississippi Laws of 1944, the law by which the tax collected was imposed, imposed a tax of $50.00 in favor of the State, then such difference in the amount of taxes demanded by the two laws amounted to an unconstitutional discrimination.

The Supreme Court of Mississippi held (r. 12) that there was no merit in the contention that the appellant was not liable for the tax for the reason that its drivers were not transient vendors or dealers. The Mississippi Court likewise held that there was no discrimination between the two sections of the law, because the Legislature in making this classificatio , which is reasonable, no doubt took into consideration the fac that local laundries were required to pay ad valorem taxes, privilege

taxes, and many other taxes. And the Court further held that the tax involved was not a tax on interstate commerce, but a tax on a person soliciting business for a laundry not licensed in the state, a local activity which applies to nonresidents alike.

ARGUMENT

This case involves the construction of sub-sections (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944. Said Section 45 being what is commonly known as a "Transient Vendors Privilege Tax Law". The pertinent parts of the general provisions of said statute are that there is imposed

> "upon each person doing business as a transient vendor or dealer, as defined in this section, upon which a privilege tax is not specifically imposed by another section of this Act, a tax for each county according to the following schedule:"

Every form of merchandise which may become the object of transient sales is divided into classes and a separate and specific amount of tax is imposed for the privilege of selling such commodities, the tax being fixed or graduated according to the conception of the Legislature as to the value of the privilege of selling such articles as transient vendors, or upon certain services which might be rendered by a transient person.

The original privilege tax upon "peddlers" is one of the oldest provisions of the Privilege Tax Law. Its primary purpose is held by the court in some of our earliest decisions to be not only for the protection of persons who might be taken advantage of by unprincipled "slick" salesmen by misrepresenting the value of articles offered for sale and being nonresidents who might never

again visit the scene of such sale, so that responsibility for the failure of such articles or service to measure up to its represented quality might not be enforced.

In order to prevent the uninformed, gullible people from such fraudulent representations of sales or service, the Legislature in the early history of the State undertook to suppress this "nefarious practice" by imposing a high privilege tax on each person engaged in the business of "peddler."

Indeed, in the early cases reported in the Mississippi Reports, there will be found that in addition to the ad-valorem or property tax, privilege taxes were the only other source of public revenue.

For the dual purpose of revenue and protection of the citizens of Mississippi, a privilege tax on "peddlers" or "transient vendors" has always been a matter of concern and strict attention by the Legislature, and has always been one of the revenue measures strictly enforced. The early statutes on the subject of privilege taxes imposed much more severe penalties than are now imposed by similar laws.

In the early history of the Privilege Tax Law of Mississippi, a person who engaged in business without the procurement of a privilege tax license was liable for 100 per cent penalty, subject to criminal prosecution, and upon conviction might be subject to a large fine, as well as imprisonment, and in addition to the civil penalties and criminal prosecution, all contracts made were held to be void.

While the penalties imposed upon persons engaging in any business without the payment of proper privilege tax have been modified to some extent, the provisions

of the Privilege Tax Law are very positive as to the imposition of a penalty for engaging in any business for which a privilege tax has not been paid.

With this background and history of the Privilege Tax Law of this state, it is easier to ascertain the legislative intent which is always a guide to the courts in construing the statute.

This suit was filed for the purpose of obtaining a refund of taxes paid by the plaintiff which admittedly operates no plant in Mississippi, and which admittedly has representatives in the State of Mississippi soliciting clothing to be laundered or cleaned, and paying no taxes of any kind to the State, either on taxable property located in the state, or any other form of taxation for the privilege of the business being conducted. It falls clearly within the plain provisions of Sub-section (t) of Chapter 45 of the Laws of 1944, which sub-section provides that:

> "Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00."

Sub-section (y) of said Section 45 also provides:

> "Provided, however, that where any person is subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

The plaintiff while admitting that the taxes demanded and paid were in strict accord with the provisions of said two sub-sections quoted, it attacks the constitutionality of said sections solely on the ground that by Sec-

tion 110, Chapter 137, Laws of 1944, the graduated tax imposed on each person operating a laundry and contains a pro viso that:

> "Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located, a tax of $8.00,"

that the imposition of the lower tax by municipalities on the operation of trucks soliciting business in municipalities is only $8.00, whereas the tax imposed by the State on trucks engaged in similar business is $50.00. It being the contention of the plaintiff that the discrepancy in the amount of taxes imposed on representatives of laundries situated in the state, and licensed municipalities, and the amount of tax imposed by the State for soliciting business for laundries not situated within the State, is an unreasonable classification and therefore unconstitutional.

In answer to this contention, it is only necessary to briefly review the decisions of the courts, including our own Mississippi Court. The cases cited are only typical of the uniform holding of the Mississippi Court on the question of the right of the legislature to classify the different occupations for the purpose of taxation. And in addition to this brief reference to the uniform holding of our Court, I refer to some cases selected at random, showing the holding of the courts of other states of the United States in similar cases.

In Jewel Tea Co. v. Troy (1935); C. C. A. 7th 80 F. (2d) 366, it was held that a license tax ordinance which imposed an annual fee for all vehicles used for the storage or carrying of certain specified food products for the purpose of delivering them to any place in the city,

and exempted therefrom any vehicles used to deliver foodstuffs from any establishment licensed as a food dealing establishment in the city, did not establish an unreasonable classification and was consequently not violative of the equal protection clause of the Federal Constitution, the court saying:

> "We are satisfied that vehicle owners delivering foodstuffs in the city and having no habitat therein are, for the purpose of such ordinances, in a class separate and apart from those who have therein permanent places of business."

And in Williams v. Bowling Green (1934) 254 Ky. 11, 70 S. W. (2d) 967, where it appeared that plaintiff who brought suit to enjoin enforcement of an ordinance of defendant municipality, was engaged in the dry cleaning business in the city but contracted for the actual work to be done by a firm maintaining a plant in another city, it was held that the ordinance, which exacted a license fee of $25.00 from persons operating a cleaning and dyeing business within the city, and a fee of $200.00 from persons engaged in the cleaning and dyeing business, without operating a plant in the city, did not create an unreasonable classification, on the theory that plaintiff's business of soliciting orders, assembling the clothes, and transporting them to the plant at which the work was done, was different from the business of actually maintaining a plant for cleaning and dyeing operations.

In St. Helena v. Butterworth (1926) 198 Cal. 230, 244 P. 357, an ordinance providing:

> "Every traveling salesman ... carrying his goods in a wagon, automobile, truck, or other vehicle ... and who does not maintain a fixed place of business within the said town . . shall pay a license tax",

and imposing a tax different in amount upon merchants maintaining a place of business within the city, was upheld, the court saying:

> "The manner in which one may conduct his business, by which he avoids the payment of rent, property tax, and other local burdens, makes it essentially different business from that conducted by regular merchants having a fixed place of business, and is a good reason for discrimination in the matter of fixing the amount of the license tax."

In American Bakeries Co. v. Huntsville (1936) 232 Ala. 612, 168 So. 880, an ordinance imposing a license tax upon itinerant sellers of bakery products and a smaller tax upon dealers in bakery products having a business establishment within the city was held not discriminatory, at least as against an itinerant seller, the Court saying:

> "The provisions of the ordinance imposing a lesser license tax or fee against bakeries having a place of business regularly opened to the public in no wise discriminates against the appellants. Confessedly, they do not fall within this latter class. They have no more just ground of complaint than has an ordinary itinerant dealer, who has paid his license to hawk his articles about the city, the right to complain that the city had imposed a different and lesser license tax upon a local merchant of the city, who sold and delivered his goods and wares to his customers throughout the city. The appellants do not fall within the class of bakers who have a plant within the city, but within the class terms 'itinerants.' Within the purview of this ordinance, the appellants were and are itinerant dealers."

State v. Gulf M. & N. R. R. Co. 104 So. 195, 154 Miss. 155, followed in Lowery v. City of Greenville, 122 So. 98:

"Const. U. S. Amend. 14, does not prohibit reasonable classification of property for purposes of taxation so long as classification rests on difference having reasonable relation to subject of legislation, so that all persons similarly situated are treated alike."

Miller v. Lamar Life Ins. Co. 131 So. 282, 158 Miss. 753:

"Classification for purposes of taxation, if not wholly unreasonable and arbitrary, and statute is uniform in operation, does not deny equal protection of laws guaranteed by Federal Constitution (Const. US. Amend. 14)."

Mississippi State Tax Com. v. Flora Drug Co. 148 So. 373, 167 Miss. 1:

"Equal protection clauses of Federal Constitution does not prevent state from adjusting its system of taxation in reasonable manner, nor compel state to adopt ironclad rule of equal taxation. (Const. U. S. Amend 14)."

"Mere inequalities or exemptions in matter of state taxation are not forbidden by Federal Constitution (Const. U. S. Amend 14)."

Since the contention of the plaintiff in the lower court involves a constitutional question, and the United States Constitution, and the construction thereof being the rule by which all constitutional questions are controlled, I call the attention of the Court to the case of Caskey Baking Co. v. Virginia, 313 US 117, decided by the Supreme Court of the United States, which is conclusive, in my opinion, of the sole question involved. The language of the Court is as follows:

"The appellant, a corporation of West Virginia, has its principal office and place of business in Mar-

tinsburg, in that state. As a foreign corporation registered in Virginia, it has paid the latter State an annual registration fee and an income tax on its net profits allocable to its Virginia business. It makes bread which it sells to grocers and other retailers in territory adjacent to Martinsburg, including Winchester and other places in Virginia. Appellant's trucks carry the bread into Virginia where they serve regular routes at regular intervals. The drivers call only on regular customers, inquire of each how much bread he needs and, in response to his order, take it from the truck and deliver it to the customer. Thus, each such transaction in Virginia is a sale and delivery in that state to a regular customer.

"The company has no property permanently located in Virginia and no place of business in the state, except that, as required by the statute respecting registerd foreign corporations, it maintains an office in the state where claims against it may be audited, settled, and paid.

"The appellant was convicted for making a sale in Virginia without having procured a license pursuant to Sec. 192b1 of the Tax Code of Virginia and a fine was imposed. The Supreme Court of Appeals affirmed the conviction.

"So far as material the statute provides: 'There is hereby imposed an annual State license tax on every person, firm and corporation (other than . . . a manufacturer taxable on capital by this State, or a distributor of manufactured goods paying a State license tax on his purchases) who or which shall peddle goods, wares, or merchandise by selling and delivering the same at the same time to licensed deal-

ers or retailers at other than a definite place of business operated by the seller. Provided, however, this act shall not be construed to apply to wholesale dealers regularly licensed by this State, and who shall at the same time sell and deliver merchandise to retail merchants.' The annual fee is $100 for each vehicle used in the business.

"It is admitted that appellant was not a manufacturer taxable on its capital stock, nor a distributor of manufactured products paying a state license tax on its purchases, nor a licensed wholesale dealer, and did not, therefore, come within any of the classes exempted by the Act.

"In the state courts, and here, the appellant challenged the statute as contravening the commerce clause and the equal protection clause of the Federal Constitution. Its position is that it is doing either an interstate business which the State may not burden by imposing a license tax, or an intrastate business as to which the exaction works a forbidden discrimination. We hold both contentions untenable.

"I. While the transportation of bread across the state line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business of peddling is what the Act hits, and this irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its bakery

were situate in Virginia the appellant would have the benefit of this exemption and, since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination. But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State, or buy or produce them from extra-state sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions.

"2. Examination of the Tax Code of Virginia discloses that the Act in question is but one portion of a comprehensive scheme of taxation. Manufacturers who sell their own products pay a tax on capital, which the State deems sufficient to cover all their activities, including the vending of the goods. Wholesale merchants who have a fixed place of business pay a license tax measured by a percentage of all their purchases; and if they are also licensed by the town or city in which they have their place of business or, in lieu thereof, are taxed by such town or city on the capital employed in the business, they may sell and deliver at the same time and place anywhere in the State without payment of any additional license tax. Every distributing house, whether operated by a manufacturer or wholesaler, for distributing goods amongst the owner's retail stores, must be licensed and pay the same tax as if it were a wholesaler. Retail merchants and peddlers at retail must be licensed and pay license taxes, — the former a percentage of the value of the purchases and the latter a fixed annual fee. Those who have no

fixed place of business, who peddle their wares only to licensed dealers or retailers at the places of business of the latter, fall into none of the described classes. As the court below points out, were it not for Sec. 192b, such peddlers would be the only vendors in Virginia to escape some form of taxation.

> "Peddlers at wholesale are not entitled to be licensed and taxed on the same basis as other vendors, as respects either form or amount. As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a State from classifying for taxation or impose any iron rule of equality. Some occupations may be taxed though others are not. Some may be taxed at one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. That is true here."

In the case of Notgrass Drug Co. v. State Ex Rel Rice, Attorney General, reported in 175 Miss. at page 358, the constitutionality of the present Sales Tax Law was attacked on the ground, among other things, that there had been an unconstitutional discrepancy between the amount of tax imposed on different persons. And in answer to this criticism, this Court used the following language:

> "Our duty is to sustain the classification adopted by the Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great."

State Board of Tax Commissioners of Indiana v. Lafayette A. Jackson, 283 US 527, 51 S. Ct. 540, 543, 75 L. Ed. 1248, 73 A. L. R. 1464:

"In imposing the tax here under consideration, the Legislature has the right to classify persons and Commodities subject thereto. 'In its discretion it may tax all, or it may tax one or some, taking care to accord to all in the same class equality of rights.' It may tax dealers who sell at wholesale, and not those who sell the same commodities at retail, or it may tax dealers who sell the same commodities, and not tax those selling other and different commodities.

Southwestern Oil Co. v. Texas, 21 US 114, 30 S. Ct. 496, 498, 54 L. Ed. 688; and Cook v. Marshall County, 196 US 261, 25 S. Ct. 233, 49 L. Ed. 471.

"It may be that the difference between wholesalers and retailers, in this connection, is not great, and is not apparent on the surface; nevertheless that court which ultimately determines the power of the Legislature in this connection has said that the classificiation can be made, and our legislative history discloses that it is the custom of Legislatures to make such."

Since the principal attack made on the statute involved by the plaintiff in the lower court is the unconstitutionality of said statute by reason of the discrimination claimed, I respectfully call the Court's attention to the following Mississippi cases, which appear on this subject:

"The legislature has a wide discretion in making the classification for legislative purposes. Huggins v. Home Mut. Fire Ins. Co. 65 So. 646, 107 Miss. 650.

"Const. Amend. U. S. 14, does not prohibit reasonable classification of property for purposes of taxation so long as classification rests on difference having reasonable relation to subject of legislation, so

that all persons similarly situated are treated alike. State v. Gulf M.N. R. Co., 104 So. 689, 138 Miss. 70.

"Classification for purposes of taxation if not wholly unreasonable and arbitrary, and statute is uniform in operation, does not deny equal protection of laws guaranteed by Federal Constitution (Const. US Amend. 14). Miller v. Lamar Life Ins. Co. 131 So. 282, 158 Miss. 753.

"Equal protection clause of Federal Constitution does not prevent state from adjusting its system of taxation in reasonable manner, nor compel state to adopt ironclad rule of equal taxation. (Const. US Amend. 14) Mississippi State Tax Com. v. Flora Drug Co., 148 So. 373, 167 Miss. 1.

"Mere inequalities or exemptions in matter of state taxation are not forbidden by Federal Constitution (Const. US Amend. 14) — Miss. State Tax Com. v. Flora Drug Co. 148 So. 373, 167 Miss. 1.

"The question of classification is primarily for Legisltaure and can never become a judicial question except for the purpose of determining whether legislative action is clearly unreasonable, and when classification is called in question, if any state of facts reasonably can be conceived that would sustain it, existence of that state of facts at time law was enacted must be assumed and courts cannot require the Legislature to specify its reasons for classification, but will always presume that Legislature acted on legitimate grounds of distinction, if such grounds exist. Russell Inv. Corp. v. Russell, 182 So. 102, 182 Miss. 385, setting aside 178 So. 815, 182 Miss. 385.

"One who assails classification in a statute must carry the burden of showing that it does not rest on any reasonable basis.

"'It is presumed that legislature in making discriminations in classifications in statutes bases them on adequate grounds. U. S. C. A. Const. Amend. 14 Sec.

"In determining whether statutes enacted by Legislature transcend limits imposed by Federal and State Constitutions, courts should proceed with greatest possible caution and should never declare a statute void unless its invalidity is shown beyond reasonable doubt.

"Courts should adopt construction of statute that will bring it into harmony with Constitution by restricting its application to legitimate field of legislation, whenever necessary in order to uphold its constitutionality and carry its provisions into effect.

"Every intendment in favor of constitutionality unless repugnancy of statute to Constitution clearly appears or is made to appear beyond reasonable doubt.

"In determining constitutionality of statute, it will be presumed that Legislature has considered effect of statute on constitutional rights of the citizen and that Legislature acted from patriotic and just motives and with a desire to promote public good.

"'When a classification in a statute is questioned, courts will presume that Legislature acted on legitimate grounds of distinction, if any state of facts reasonably can be conceived that would sustain clas-

sifications, even if reasons are not obvious. Stone v. General Elec. Contr. Corp. 7 So. 2d, 811, 193 Miss. 317 followed in Stone v. Universal Credit Co., 7 So. 2d, 820, 193 Miss. affirmed Universal Credit Co. v. Stone, 63 S. Ct. 66, 317 US 591, 87 L. Ed. 484, followed in Stone v. Yellow Mfg. Acceptanc. Corp. 7 So 2d, 820, 193 Miss., 338, affirmed Yellow Mfg. Ac. Cor. v. Stone, 63 S. Ct. 66, 317 US 591, 87 US L. Ed. 484, rehearing denied 63 S. Ct. 157, 317 US 708, 87 L. Ed. 565.

"Every reasonable doubt should be resolved in favor of constitutionality of a statute. — State v. Rosell, So. 2d, 867, 192 Miss. 873.

"A statute should be construed if reasonably possible so as to avoid rendereing it unconstitutional or seriously endangering its constitutionality.

"Where a statute is capable of two constructions, one of which would render it invalid and the other valid, the construction which upholds its validity must be adopted.

"All presumptions should be indulged in favor of validity of a statute, and such a construction should be given to it, if possible, as will uphold it, and its unconstitutionality must appear beyond a reasonable doubt before it will be held to be invalid. California Co. v. State Oil & Gas Board, 27 So. 2d. 542, 200 Miss. 824, followed in 27 So. 2d. 548, 200 Miss. 849, suggestion of error overruled 28 So. 2d. 120, 200 Miss. 824.

"A statute will not be held unconstitutional unless clearly so. — Gabriel v. Brame, 28 So. 2d. 581, 200 Miss. 767."

SERVICE RENDERED BY A LAUNDRY OR CLEANER IS DIFFERENT IN ITS NATURE FROM MANY OF THE ACTIVITIES TAXED BY SO-CALLED "TRANSIENT VENDOR" SECTION OF THE PRIVILEGE TAX LAW.

In the case of Campbell Cleaning & Dye Works v. Porter, reported in 183 SW 2d 249, the Court of Civil Appeals of Texas defined the term "laundry" as follows:

> "Whatever may be the etymological derivation of the word, in the social and domestic life of today the popular and ordinary meaning of the term 'laundry,' used in connection with the word 'public,' is that of a place to which the public are invited to deliver soiled clothes to be washed, dried, starched, ironed, and subjected to the processes ordinarily employed to render soiled clothes suitable for further use.
>
> "Webster defines 'Dry-clean' to mean 'To cleanse (a garment) with gasoline, benzine or the like.
>
> "We think, under the proof, the findings of the court and the definitions, the work performed was in a laundry and hence within the statute. It need not be determined, and we do not determine, the place was exclusively a dry cleaning or dyeing establishment. We are of the opinion it cannot be said it is not a laundry. Furthermore, we regard it a matter of common knowledge that modern laundries, as a rule, do dry cleaning and pressing as a part of their laundry service."

It is also a matter of common knowledge that modern laundries have adopted the common practice of having their solicitors or representatives collect at the place of

residence or place of business of its potential customers and pick up or receive the articles to be cleaned or laundered. And to return such articles when cleaned to the place where received and collect the charge made for the service rendered.

The patrons, or owners of such articles are not concerned with, nor informed, as to where the actual cleaning or laundering is performed. The owner or customer of such articles only knows that the agent or representative calling on the customer receives the articles to be laundered or cleaned at the residence or place of business of the owner and returns the cleaned articles to the same place.

If, as in some instances, there is operated what is commonly called a "Cash and Carry" place of business, the owner of the articles to be cleaned carries such articles to some designated office or "receiving station" and calls for the articles at a designated time and receives same after the service has been rendered thereon. The owner of the articles does not know or care whether the articles to be washed or cleaned are serviced at the place where such articles are delivered by him, or whether they are sent to a plant located in another part of the city, or sent out of the state to be cleaned or laundered. Indeed, it is the service of cleaning or washing the article that the owner pays for, without reference to where the articles are actually washed or cleaned.

It is a matter of common knowledge that many persons offering cleaning and laundry service to the public have no plant or place of business, except a truck or other vehicle into which the articles are received, and by which such articles are delivered to the owner after the service of cleaning or washing has been performed.

It is a matter of common knowledge, and therefore well known to the general public that there is at least one laundry in the City of Jackson, Mississippi, which although long established, lost all of its machinery from its plant, but has continued to give service to its former customers through the medium of sending its trucks to the places where the articles are owned, picking up such articles and delivering same to the owner after the actual cleaning or laundering has been procured to be done at some other plant in the city.

It will be noted that the provision of the law under which the tax involved was demanded is a part of Section 45, Chapter 138, Laws of 1944, and the several taxes defined and imposed by said section apply only to activities "on which a priviledge tax is not specifically imposed by another section of the act".

Section 110 of Chapter 137 of the Laws of 1944, being the general privilege tax law which is now collected only by municipalities and counties imposes a graduated tax on each person operating a laundry, the tax being graduated according to the size of the municipality in which the laundry is operated. It will be noted that there is no reference made to a plant of any kind, the tax being graduated according to the potential business indicated by the size of the municipality in which the business is conducted.

It will also be noted that the language of the subsection imposing the tax on the solicitor for a laundry, limits the application of the tax to soliciting business "for a laundry not licensed in this state as such". And the construction of said subsection in connection with the provisions of Section 110, Chapter 137, Laws of 1944 has uniformly been that where a nonresident operator of a

laundry or cleaner establishes an office or "receiving station" within the state, and pays the local laundry license according to the graduated tax imposed in accordance with the size of the municipality in which such office or receiving station is operated, that such nonresident owner of such place of business would not be required to pay the $50.00 on each truck imposed on solicitors of laundry and cleaning for laundries not licensed in the state, and would only be required to pay the tax of $8.00 for each municipality in which the cleaning and laundrying was solicited, other than the one in which the laundry was licensed.

I therefore sincerely urge that inasmuch as the Courts have uniformly held that persons engaged in any transient business would be the ones liable for the tax imposed under the Transient Vendor section; and said section further providing that "Provided further, that the Commissioner shall issue transient vendor licenses in the name of the agent who operates the vehicle from which the merchandise is sold and delivered", and "Every vehicle used by an individual (except a person specifically exempted) subject to the provisions of this section, must have conspicuously displayed thereon the name of the person using same and his business address", it is apparent that the license demanded on which the tax was paid was properly demanded in connection only with the representatives of the company because of its operation within the state in rendering service to the owners of articles to be cleaned or laundered.

The attention of the Court is called specifically to the fact that in the session of the legislature of 1944, the legislature divided the privilege tax code into two separate classes. The privileges designated as "State Taxes"

previously collected by the sheriffs of the several counties for the benfit of the state, were included in Chapter 137 of the Laws of 1944, and the state surrendered its right to have any of said taxes collected for its benefit. It allowed by said act any municipality or county which adopted an ordinance or an order adopting such chapter as its privilege tax code, to have the exclusive right to collect such taxes on the privileges therein enumerated.

Those privileges which had been designated in the general privilege tax code previously as "Statewide Taxes" were included in Chapter 138 of the Laws of 1944, and the authority to collect taxes on the privileges therein enumerated was confined to the State Tax Commissioner or the Insurance Commissioner.

In order to emphasize the complete separation of the two classes of privileges taxed and confine the right of collection of each class to the respective authorities, Section 3 of Chapter 137, Laws of 1944 requires persons desiring to exercise any privilege taxed by said chapter to procure from the tax collector of the county or municipality, as the case may be, a license for the several privileges enumerated in said chapter; and Section 227 of said chapter provides as follows:

> "The privileges taxed by this act shall not be subject to taxation for a greater extent than is permitted by the sections of this act, either by the board of supervisors of any county or by any municipality, and no municipality or county shall levy any tax on any privilege which has been duly licensed for statewide purposes."

Section 70 of Chapter 138, Laws of Mississippi for 1944, the chapter covering "State-Wide Taxes," in which

Section 45, the transient vendor section is included, provides as follows:

> "Sec. 70. The privileges taxed by this act shall not be taxed by the board of supervisors of any county; nor by any municipalities except as may be herein provided."

It will thus be seen that the two classes of privilege taxes which attorneys for the appellant compare in their argument as unconstitutional discrimination, are separate and distinct. And do not apply to the same activity. The language of Section 70 just quoted expressly prohibits municipalities and counties from taxing any activity covered by Chapter 138 of the law; and the tax of $8.00 imposed and to be collected by municipalities is imposed only on persons representing local laundries taxed and licensed under the provisions of Section 110, Chapter 137 of the Laws of 1944, and such activity could not be taxed by Section 45, Chapter 138, Laws of 1944 because of the provision therein: "upon which a privilege tax is not specifically imposed by another section of this act."

THE AUTHORITIES CITED BY ATTORNEYS FOR THE APPELLANT

I have no quarrel with the authorities cited in the brief of the attorneys for the appellant with reference to the fact that a state may not tax interstate commerce. But, I respectfully submit that the activities engaged in by the appellant were not in interstate commerce. The activity for which the tax in question was imposed is strictly local, in that the soliciting of wearing apparel to be laundered and cleaned, which apparel is procured from the owner within the state, and the return of said articles

when laundered and cleaned to the owner, is merely a local service rendered by the drivers of the vehicles in accepting articles to be laundered and cleaned and returning same to the owner at the exact place where such articles were received.

The three cases cited by the attorneys for the appellant on the question of whether or not the soliciting of articles of wearing apparel to be laundered and cleaned constitutes the operation of a laundry, are not in support of the contention made by the attorneys for the appellant, which contention is sought to be sustained by the citation of the cases mentioned.

In the case of Kansas City v. Seaman, 160 Pac. 1139, an ordinance of the municipality imposed a tax on laundries and the court held that the mere fact that clothing was gathered up to be laundered and distributed, did not amount to conducting a laundry in the city in contemplation of the law imposing the tax on the operation of a laundry. The Court further holding that the only part of the activity which amounted to interstate commerce was the transmission of the articles across state lines, which activity was not taxed by the provisions of the law.

Another case, Commonwealth v. Pearl Laundry Company, 105 Ky. 259, is a case where a municipal ordinance imposed a tax on the operation of a laundry and the Court held that the mere gathering up of clothing to be laundered did not constitute the operation of a laundry in contemplation of the ordinance imposing a tax on the operation of a laundry.

I therefore respectfully submit that the mere fact that the local solicitors may have transmitted the articles of clothing across the state line to have same laundered and

cleaned, was not a part of the activity taxed by the law in question. A solicitor of wearing apparel to be laundered and cleaned, who did not solicit such work for a laundry licensed in Mississippi, would be liable for the tax, without reference to the residence of such person. The activity being taxed is uniform in that all persons engaged in a similar activity are taxed on the same basis. The same contention was made in the brief of the appellant before the Supreme Court of Mississippi. And the Supreme Court of Mississippi, in its opinion, used the following language which appears on page 14 of the record:

> "This tax does not violate the Fourteenth Amendment of the Constitution of the United States or the Fourteenth Amendment of the Constitution of the State of Mississippi."

The further contention of the appellant which was made before the Supreme Court of Mississippi was answered by said court in the following language, as appears on page 12 of the record:

> "We are of the opinion that there is no merit in the contention that the appellee is not liable for the tax for the reason that its drivers are not transient vendors but dealers."

I therefore respectfully submit that under the holding of the Supreme Court of Mississippi, all of the questions raised by the appellant in its brief have been answered by the Supreme Court of Mississippi contrary to the contention of the attorneys for the appellant, and as held by this Court in the case of General Trading Co. v. State Tax Commission of Iowa, 322 US 335:

> "The application by that Court of its local laws and the facts on which it founded its judgment are of course controlling here."

The same principle has been announced by this Court in many other cases, and the fact that the Mississippi Court has definitely decided under the facts and the law of Mississippi that interstate commerce is not involved, neither do the provisions of said act violate the commerce clause or any other provision of the Constitution of the United States, nor of the Constitution of the State of Mississippi, this Court will recognize the paramount right of the Supreme Court of Mississippi to construe its own laws under the facts and conditions which were fully presented and considered by said Court, but answered contrary to the contention of the appellant.

CONCLUSION

I therefore specifically submit:

1. That the taxes sued for were collected in strict compliance with the law imposing the tax.

2. That there is no unconstitutional discrimination involved under the facts in this case, since the necessary status of the appellant, not being licensed within the state, will prohibit the application of the law as imposed under the provisions of Section 110, Chapter 137.

3. Section 45, Chapter 138, Laws of 1944, specifically imposed the tax collected, because said taxpayer had not qualified under the provisions of said Section 110, Chapter 137, Laws of 1944.

It is therefore urged that the decision of the Supreme Court of Mississippi in this case was eminently correct and that said judgment should be affirmed by this Court.

Respectfully Submitted:

J. H. Ermann

Attorney for Appellee

CERTIFICATE

I, J. H. Sumrall, attorney of record for the appellee, do hereby certify that I have this day forwarded, by United States Mail, postage prepaid, to Messrs. Watkins & Eager, Jackson, Mississippi, and Mr. C. E. Clifton, Memphis, Tennessee, attorneys for appellant, true copies of this brief.

This the 23rd day of November, 1951.

J. H. Sumrall

Attorney for Appellee